

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman
Mark Acton, Vice Chairman;
Ruth Y. Goldway;
Tony Hammond; and
Nanci Langley

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL EXPRESS
PRIORITY MAIL EXPRESS CONTRACT 23

Docket No. MC2015-16

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL EXPRESS CONTRACT 23 (MC2015-16)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2015-20

PUBLIC REPRESENTATIVE COMMENTS ON THE
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL EXPRESS CONTRACT 23
TO THE COMPETITIVE PRODUCT LIST

(December 17, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2279.¹ In that Order, the Commission established the above referenced dockets to receive comments from interested persons, including the undersigned Public Representative, regarding the Postal Service's Request to add Priority Mail Express Contract 23 to the competitive product list.² The Public Representative recommends that the Commission consider accepting the Postal Service's Request.

According to the Postal Service, Priority Mail Express Contract 23 (Contract 23) is a competitive product featuring rates "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the

¹ PRC Order No. 2279, Notice and Order Concerning the Addition of Priority Mail Express Contract 23 to the Competitive Product List, December 10, 2014 (Order).

² Request of the United States Postal Service to Add Priority Mail Express Contract 23 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2014 (Request).

prices and classification underlying Contract 23 are supported by Governors' Decision No. 11-6.³ Further, the Postal Service asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 23 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request, Attachment D.

The effective date for Contract 23 is one business day following the day on which the Commission issues all necessary regulatory approvals. Attachment B at 5. The contract will expire three years from the effective date unless either party terminates the contract on 30 days prior written notification or other specified instances. *Id.* at 6.

COMMENTS

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, Contract 23 and the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Contract 23 should be categorized as a competitive product and added to the competitive product list. In the first year of Contract 23, it appears that sufficient revenues will be realized and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 23 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service's Statement of Supporting Justification makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

D. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service's Request to add Contract 23 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; and must ensure that each competitive product will cover its attributable costs, and that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, Contract 23 is expected to remain in effect for a period of three years. During this period, Contract 23, as presented in the non-public version thereof, includes a mechanism for the annual adjustment of prices to improve the likelihood that Contract 23 meets the requirements of 39 U.S.C. § 3633(a). As stated in Contract 23, annual price adjustments are linked to the generally applicable prices for Priority Mail Express Commercial Plus. If Contract 23 costs do not outpace the associated revenues, it is likely to continue providing a positive contribution to institutional costs.

The Postal Service must file revenue and cost data for Contract 23, in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results in future Annual Compliance Determination (ACD) reports to ensure compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

/s/_____

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